

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
INDUSTRIAL ROCK PRODUCTS, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB Nos. 80-157, 80-158
and 80-159

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

THIS MATTER, the appeal of three \$250 civil penalties, Nos. 4761, 4762 and 4763, for causing an outdoor fire allegedly in violation of respondent's Sections 8.02(3), 8.05(1) and 9.03(b)(2), of Regulation I, came on for hearing before the Pollution Control Hearings Board, Marianne Craft Norton, Member, convened at Tacoma, Washington, on December 12, 1980. Hearing Examiner William A. Harrison presided.

Appellant appeared through its attorney, Martin E. McQuaid.
Respondent appeared by its attorney, Keith D. McGoffin.

1 Having reviewed the Proposed Order of the presiding officer
2 mailed to the parties on the 5th day of January, 1981, and more
3 than twenty days having elapsed from said service; and

4 The Board having received no exceptions to said Proposed Order
5 and the Board being fully advised in the premises; NOW THEREFORE,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
7 Order containing Findings of Fact, Conclusions of Law and Order dated
8 the 5th day of January, 1981, and incorporated by reference herein
9 and attached hereto as Exhibit A, are adopted and hereby entered as
10 the Board's Final Findings of Fact, Conclusions of Law and Order
11 herein.

12 DATED this 25th day of March, 1981.

13 POLLUTION CONTROL HEARINGS BOARD

14
15 Nat W. Washington
16 NAT W. WASHINGTON, Chairman

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18 David A. Akana
19 DAVID AKANA, Member

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21 Gayle Rothrock
22 GAYLE ROTHROCK, Member

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PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

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Appellant appeared through its attorney, Martin E. McQuaid.

Respondent appeared by its attorney, Keith E. McGoffin. Reporter

EXHIBIT A

1 Lloyd Holloway recorded the proceedings.

2 Witnesses were sworn and testified. Exhibits were examined. From
3 testimony heard and exhibits examined, the Pollution Control Hearings
4 Board makes these

5 FINDINGS OF FACT

6 I

7 Respondent, pursuant to RCW 43.21B.260 has filed with this Board a
8 certified copy of its Regulation I containing respondent's regulations
9 and amendments thereto of which official notice is taken.

10 II

11 Appellant, Industrial Rock Products, Inc., operates a rock quarry
12 2-1/2 miles south of Monroe, Washington. On June 17, 1980, the Monroe
13 Fire Department received a citizen complaint about smoke and flyash
14 emanating from the quarry. The Chief of the Fire Department
15 investigated, and observed a fire some 150' long, 30' deep and 6'
16 high. It was unattended, and there was no source of nearby water.
17 This information was relayed to respondent, Puget Sound Air Pollution
18 Control Agency (PSAPCA), whose inspector arrived at the scene about
19 4:00 p.m. He observed the same fire which contained:

- 20 1. Natural vegetation (about 20%).
21 2. Broken boards from a building demolition project (about 80%).
22 3. Asphalt chunks as from a broken roadway (scattered).

23 III

24 The inspector observed the opacity of the smoke emissions which
25 were light blue and of 100% opacity for a period of 6 consecutive
26 minutes.

IV

Respondent's inspector contacted the quarry office manager who, when informed of the fire, produced a permit from the State Department of Natural Resources for forest fire abatement. This permit allowed the burning of two 15 x 15 piles, one at a time, with someone in attendance at all times and with water present. Appellant had no written permit from respondent, PSAPCA.

V

Appellant later received three notices and orders of civil penalty citing the following regulations and assessing the following civil penalties:

- | | |
|------------------------|-------|
| 1. Section 8.02(3) | \$250 |
| 2. Section 8.05(1) | \$250 |
| 3. Section 9.03(b) (2) | \$250 |

From these appellant appeals.

VI

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to the following

CONCLUSIONS OF LAW

I

Section 8.02(3) of respondent's Regulation I prohibits the burning of asphalt. By burning chunks of asphalt, appellant violated that section. As will be further developed below, appellant also violated Section 8.02(4) by burning broken boards from a demolition project as

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

1 that section prohibits burning for the purpose of demolition of
2 materials.

3 II

4 Section 8.05(1) of respondent's Regulation I prohibits, without a
5 PSAPCA permit, any outdoor fire other than for landclearing or
6 residential burning. Appellant has not been shown to have violated
7 this section for two reasons. First, the preponderant part of the
8 fire consisted of broken boards from a demolition project, the burning
9 of which is prohibited in Section 8.02(4). It therefore follows that
10 no PSAPCA permit could have been obtained for this burning. As to the
11 balance of the fire consisting of natural vegetation, respondent has
12 not proven that this material did not originate on the lands in
13 question. Such a fire thus qualifies as a land clearing fire.
14 Section 1.07(nn). Respondent has also not proven that the fire
15 occurred in a locality requiring a prior population density
16 verification by the agency. See Section 8.06(3). Hence for most of
17 the fire a PSAPCA permit cannot be legally obtained, and for the
18 balance of the fire a PSAPCA permit isn't needed.

19 III

20 In emitting an air contaminant, smoke, for more than three minutes
21 in any one hour, which contaminant is of an opacity obscuring an
22 observer's view to a degree equal to or greater than does smoke
23 designated as No. 1 on the Ringelmann Chart (20% density), appellant
24 violated Section 9.03(b)(2) of respondent's Regulation I. Appellant
25 is not entitled to the protection of Section 8.10 exempting outdoor

1 fires from Section 9.03 where such fires comply with Article 8 because
2 appellant has violated Section 8.02(3) of Article 8 (see Conclusion of
3 Law II, above).

4 IV

5 Whereas this Board will extend leniency to those making a good
6 faith effort to comply with the law as it may appear to them,
7 appellant is not entitled to such leniency because of its Department
8 of Natural Resources permit. Not only was the burn pile 10 times the
9 bulk allowed by that permit but it was burned with disregard for the
10 conditions requiring attendance and water. Moreover, appellant has
11 casually undertaken to burn what is preponderantly building demolition
12 material under a permit expressly limited to the prupose of forest
13 fire abatement. For these reasons the civil penalties assessed are
14 justifiable as to amount.

15 V

16 Any Conclusion of Law which should be deemed a Finding of Fact is
17 hereby adopted as such.

18 From these Findings the Board enters this
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ORDER

The violations and two \$250 civil penalties relating to Sections 8.02(3) and 9.03(b)(2) are hereby affirmed.

The violation and \$250 civil penalty relating to Section 8.05(1) is hereby reversed.

DONE at Lacey, Washington, this 5th day of January, 1981.

POLLUTION CONTROL HEARINGS BOARD

Marianne Craft Norton
MARIANNE CRAFT NORTON, Member